

**REMARKS**

The following remarks are responsive to the Office Action mailed January 29, 2007. A Petition for a Three-Month Extension of the term for a response to said Office Action, up to and including July 29, 2007 is transmitted herewith. Claims 1-6, 9-16, and 20-24 are pending in the present application. Claims 2-6, and 9-16 have been amended. Claims 20-24 have been added. Support for the new claims can be found in the originally filed disclosure in at least paragraphs [0047] to [0053]. No new matter has been added. Claims 7, 8 and 17-19 have been canceled without prejudice or disclaimer. Applicant reserves the right to introduce subject matter from these claims in one or more divisional applications.

Applicants would like to thank the Examiner for indicating allowable subject matter in the present application. In the Action, claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base and any intervening claims. In the present response, Applicants present arguments for the allowance of claim 1. Therefore, claim 4 remains a dependent claim of claim 1.

In the Action, claims 1, 2, 3, and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by German reference DE 3023942 to Keller ("Keller"). The Examiner asserts that Fig. 6 of Keller shows an instrument for distracting an intervertebral space with two elongate sections each having prongs (18, 19). As further asserted in the Action, the Examiner is interpreting the claim elements "grooves" as a channel in something.

Applicants respectfully assert that independent claim 1 is unanticipated by Keller because the cited reference neither teaches nor suggests an instrument for distracting an

intervertebral space comprising first and second elongated sections having a proximal end and a distal end, the distal end "having at least two prongs extending therefrom." In the current Action, the Examiner asserts Fig. 6 of Keller shows an instrument for distracting an intervertebral space with two elongate sections each having prongs (18, 19). As clearly shown in Fig. 1 of Keller, element 19 has two prongs; however, element 18 only has one prong. Element 18 in Keller is specifically inserted into hole 16. Further, while element 21 in Keller may include two prongs, element 19 and 21 are not "connected at their proximal ends" as required by claim 1. Therefore, claim 1 is not anticipated by Keller. Applicants' therefore respectfully request reconsideration and allowance of claim 1 over Keller. Claims 2, 3, and 6, and new claims 20-22 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

Further, claim 5 is rejected under 35 U.S.C. 103(a) as being obvious over Keller. Claim 5 is unobvious in view of Keller by virtue of its dependence from claim 1, which is unanticipated for the reasons set for above.

Further in the Action, the Examiner has rejected claims 9-11, and 13-15 under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. 6,755,841 to Fraser et al. ("Fraser"). The Examiner asserts that Fraser includes a pair of identical ramps 56, 58 facing one another and converging toward one another. Each of the ramps includes engagement members 50a, 50B at the distal end of the ramps. Further, the Examiner contends that Fig. 7 shows the interior side of the engagement members is formed as two longitudinal guides 60 or grooves laterally spaced extending along its surface.

Applicants respectfully assert that amended

independent claim 9 is unanticipated by *Fraser* because the cited reference neither teaches nor suggests an instrument for distracting an intervertebral space comprising a pair of identical ramps, "said ramps further comprising a concave interior side." In contrast, the interior side of the ramps in *Fraser* is flat. Further, pusher block 18 in *Fraser* as shown in Fig. 7 is a substantially block-like object configured to engage longitudinal guides 60 having flat distal ends 12A, 14A. There is no teaching or suggestion of the ramp portions in *Fraser* to have concave interior surfaces. Therefore, amended claim 9 is not anticipated by *Fraser*. Applicants' therefore respectfully request reconsideration and allowance of claim 9 over *Fraser*. Claims 10-11, and 13-15, and new claims 23-24 are unanticipated, *inter alia*, by virtue of their dependence from claim 9, which is unanticipated for the reasons set forth above.

Further, claims 12 and 16 are rejected under 35 U.S.C. 103(a) as being obvious over *Fraser*. Claims 12 and 16 are unobvious in view of *Fraser* by virtue of its dependence from claim 9, which is unanticipated for the reasons set forth above.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's agent at (908) 654-5000 in order to overcome any additional objections which he might have.


If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Application No.: 10/782,981

Docket No.: SPINE 3.0-437 -  
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Respectfully submitted,

By 

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